IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 555 (S/S) of 2007

Kumari Manuhar Arya D/o Sri M.R. Arya
R/o Bank Colony, Beethoria No. 1, Post Office Haripura,
Kusumkheda, Haldawni,
District-Nainital ----------Petitioner

Versus

1. The State of Uttranchal through The Secretary, Vidhyalaya Shiksha, Uttaranchal, Dehradun
2. The Director, Vidhyalaya Shiksha, Uttaranchal, Mayur Vihar, Dehradun
3. The Additional Director of Education, Kumaun Mandal Nainital
4. The Principal, Rajkiya Kanya Uchhattar Madhyamic Vidhyalaya, Nagla District- Udham Singh Nagar

----------Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri Jitendra Chaudhary, learned counsel for the petitioner and Sri Paresh Tripathi, learned Standing Counsel state of Uttarakhand for the respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:

1. To issue a writ, order or direction in the nature of mandamus commanding and direction the respondents no. 4 i.e. The Principal, Rajkiya Kanya Uchhattar Madhyamik Vidhyalaya, Nagla, District Udham Sing Nagar that she may permit to the petitioner to join her services as Assistant Teacher (English) in the present Institution in pursuance to the transfer order dated 28 October 2006 passed by the respondent no. 3.

2. or issue any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
3. Award the cost of the petition.

The stand of the petitioner, who was working as Assistant Teacher (English) in Government Girls Inter College, Payegarur, District Bageshwar, is that she was transferred by the Additional Director of Education, Kumaun Mandal, Nainital vide order dated 28.10.2006 to Government Girls Higher Secondary School, Dharampur, District Udham Singh Nagar. The said order was later on modified and the petitioner was transferred to Government Girls Higher Secondary School, Nagla District Udham Sing Nagar.

The submission of the learned counsel for the petitioner is that in pursuance to the aforesaid order dated 28.10.2006, the petitioner was relieved by the Principal of Government Girls Inter College Payegarur District Bageshwar on 24.04.2007. After being relieved, the petitioner approached the Principal of Government Girls Higher Secondary School, Nagla, Udham Singh Nagar, however, she was not permitted by the Principal of the said institution to join and the petitioner was informed that permission would be granted to her only after receiving directions from the higher authorities. Thereafter, the petitioner made an application before the Additional Director of Education on 26.04.2007. On the application of the petitioner, the Additional Director of Education, Kumaun Mandal, Nainital made an endorsement to the Principal of Government Girls Higher Secondary School, Nagla Udham Singh Nagar to permit the petitioner to join at Nagla. In spite of this endorsement, the petitioner has not been permitted to join at Nagla.

This Court is not an executing Court for execution of order passed by the officers of Education Department. In case, the Principal of Government Girls Higher Secondary School, Nagla Udham Singh Nagar is not complying with the order passed by Additional Director of Education, Kumaun Mandal, Nainital, respondent no. 3 himself is competent enough to take action against that Principal.

From Perusal of the transfer order, it transpires that the transfer order itself is not sound. While transferring the petitioner, the Additional Director of Education has put in conditions directing the Principals of the Schools not to permit any person, who has been transferred if he is not a regular teacher and is an ad hoc teacher. The service record of the person is available with the Additional Director of Education and it is the duty of the transferring authority to find out whether the person is an ad hoc employee or a regular employee before making transfer. However, in the present case, the petitioner has submitted that she was appointed as Assistant Teacher on regular basis. The second condition in the transfer order is also strange. It is stated that in case the post is not vacant, the principal will not permit anybody to join even though he/ she has been transferred. This record is also available with the Additional Director of Education and there was no occasion to pass such type of transfer orders which make great problems to the employee as in the present case, the petitioner has been relieved from Payegarur but she is not being permitted to join at Nagla, Udham Singh Nagar. It is not known on which ground she is not being permitted to join even after passing order by the Additional Director of Education on the application of the petitioner.

In the circumstances, I direct the Additional Director of Education, Kumaun Mandal, Nainital to take decision in this matter and direct the Principal of the institution to permit the petitioner to join, if there is no legal hurdle or the transfer order has not been cancelled or the transfer order is against the policy of the Government.

With this direction, the writ petition is finally disposed of. All the pending applications stand disposed of.

(M.M. Ghildiyal, J.)

21.05.2007
VKS